

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STEPHEN A. KUNCIO,

Plaintiff,

v.

Civil Action No.:

NOTICE OF REMOVAL

MARQUES O. ARMSTRONG and AMAZON
LOGISTICS, INC.

Defendants-Petitioners.
----- X

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Defendant AMAZON LOGISTICS, INC. files this Notice of Removal of this civil action from the Supreme Court of the State of New York, Westchester County, to the United States District Court for the Southern District of New York, New York Division, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. The basis for removal is more particularly stated as follows:

1. On December 17, 2021, plaintiff, Stephen Kuncio, filed a summons and complaint in the Supreme Court of the State of New York, Westchester County, against among others, the defendant, Amazon Logistics, Inc. The action is entitled *Stephen A. Kuncio v. Marques O. Armstrong and Amazon Logistics, Inc.*, and bears Index No. 67596/2021. As the action is venued in the Supreme Court of the State of New York, Westchester County, removal to the United States District Court for the Southern District of New York is proper.

2. This civil action arises from a motor vehicle accident that occurred on November 7, 2021. Plaintiff alleges he sustained severe and serious personal injuries when a motor vehicle bearing Connecticut license plate BA89434 operated by Defendant Marques O. Armstrong came into contact with Plaintiff a bicyclist at the intersection of Salem Road and Patterson Road in

Westchester County, New York. Plaintiff alleges, *inter alia*, that the negligence of defendants caused the subject accident. Plaintiff seeks to recover damages for personal injuries allegedly caused by defendants' negligence and demand \$1,000,000 in damages. Accordingly, the amount in controversy in this suit is in excess, exclusive of interest and costs of \$75,000. *See* 28 U.S.C. § 1332 (a).

3. The above-caption action was commenced by the service of a summons and complaint against, among others, the defendant Amazon Logistics, Inc. on or about January 10, 2022. Copies of the summons, complaint and affidavit of service are annexed hereto as **Exhibit "A."** Said documents did not contain the total amount of damages sought. *See* **Exhibit A.**

4. Thereafter, on January 28, 2022, Amazon Logistics, Inc. joined issue by service of an answer, along with a various Combined Demands, including a request for supplemental demand pursuant to CPLR 3017(c) setting forth the total damages to which plaintiff deems plaintiff is entitled. Amazon Logistics, Inc.'s answer and demands are annexed hereto as **Exhibit "B."**

5. Plaintiff responded to Amazon Logistics, Inc.'s demand on January 31, 2022, in which plaintiff states he demands one million dollars for past and present pain and suffering, see plaintiff's response at ¶ XII, a copy of which is annexed hereto as **Exhibit "C."** As plaintiff's response was dated January 31, 2022, which was received via the mail by Amazon on February 16, 2022, and qualified as an "other paper" from which it may be first ascertained that the case has become removable, this motion is timely made pursuant to 28 U.S.C. §§ 1446 (b) (3) and 1446 (c)(3)(A) .

6. Upon information and belief, to date, co-defendant Marques O. Armstrong has not yet been served with the complaint. A copy of a screenshot of NYSCEF document list for this

matter is annexed hereto as **Exhibit “D.”** As defendant Amazon Logistics, Inc. is the only defendant served in this action, no other consent is required pursuant to 28 U.S.C. §§ 1446 (b) (2) (A).

7. This action is one which the United States District Court has original jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441. There is diversity of citizenship between the plaintiff and Amazon Logistics, Inc., who is the only defendant that has been served to date.

8. Pursuant to the complaint in the State Court action, plaintiff, Stephen A. Kuncio, is a citizen and resident of the State of New York. *See Exhibit A* at ¶ 1. For purposes of removal, therefore it must be presumed that plaintiff is now, and was at the time of commencement of this action, a citizen of New York. *See Spnaos v Skouras Theatres Corp.*, 364 F.2d 161, 163 (2d Cir. 1966) (for purposes of diversity jurisdiction, an individual is a citizen of the state in which she is domiciled when the complaint is filed).

9. Defendant Amazon Logistics, Inc., is now, and was at the time of commencement of this action, a Delaware corporation and citizen of the State of Delaware and the State of Washington, by virtue of having its principal place of business located at 410 Terry Avenue North, Seattle Washington, 98109. *See Hertz Corp v Friend*, 559 U.S. 77, 77 130 S. Ct. 1181, 1183 (2010) (holding a corporation’s principal place of business is where the corporation’s high level officers direct, control, and coordinate the corporation’s activities).

10. Further, even if defendant Marques O. Armstrong was served prior to this Notice of Removal, complete diversity would still exist. Defendant Armstrong is a resident and citizen of the State of Connecticut, who resides at 180 Knowlton Street, Stratford, Connecticut 066515. *See Exhibit A*, Summons and **Exhibit “E,”** a copy of the Police Accident Report for the subject accident.

11. Therefore, as plaintiff was a resident and domiciliary of the State of New York at the time this action was filed, Amazon was a citizen of the States of Delaware and Washington, defendant Marques O. Armstrong was a citizen of the State of Connecticut, complete diversity exists. Additionally, as plaintiff seeks damages for personal injuries in excess of \$75,000 in damage, removal is proper. *See Kings Choice Neckwear, Inc. v DHL Airways, Inc.*, 2003 US Dist LEXIS 17507 [S.D.N.Y. Oct. 1, 2003] (holding an action based on state law is removable to federal court when the district court would have original jurisdiction because the amount in controversy exceeds \$75,000 and, *inter alia*, there is complete diversity of citizenship between plaintiff and defendants, 28 U.S.C. § 1332, provided that none of the parties properly joined and served at the time of removal are residents of the forum state, 28 U.S.C. § 1146 (b); *see also Wagner v Express Scripts, Inc.*, 2004 US Dist LEXIS 81080 [S.D.N.Y. May 11, 2004].

12. Written notice of the filing of this Notice of Removal will be given to plaintiff and adverse parties promptly after the filing of this Notice of Removal, as required by 28 U.S.C. § 1146 (d).

13. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, Westchester County, promptly after the filing of this Notice of Removal with the United States District Court, as required by law.

14. Attached to this Notice of Removal, and by reference made a part hereof, are true and correct copies of all process, pleadings, and orders filed in the above-captioned action as required by 28 U.S.C. § 1446 (a).

15. By filing this Notice of Removal, the Amazon Logistics, Inc. does not waive any defense which may be available to them, specifically including, but not limited to, their right to

contest in personam jurisdiction over them, improper service of process upon them, and the absence of a basis for venue in this Court or in the court from which the action has been removed.

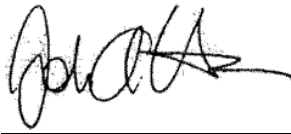
WHEREFORE, defendant, Amazon Logistics, Inc. pray that this action proceed in this Court as an action properly removed thereto.

Dated: White Plains, New York
March 2, 2022

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:



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